

Case 3:09-cv-00218 Document 4 Filed 03/04/09 Page 1 of 3 PageID #: 23

(1981)(overruled in part by *Daniels v. Williams*, 474 U.S. 327, 330 (1986)); *Flagg Bros v. Brooks*, 436 U.S. 149, 155-56 (1978); *Black v. Barberton Citizens Hosp.*, 134 F.3d 1265, 1267 (6<sup>th</sup> Cir. 1998). Both parts of this two-part test must be satisfied to support a claim under § 1983. See *Christy v. Randlett*, 932 F.2d 502, 504 (6<sup>th</sup> Cir. 1991).

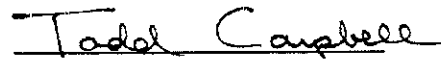
Under the Prison Litigation Reform Act (PLRA), the courts are required to dismiss a prisoner's complaint if it is determined to be frivolous, malicious, or if it fails to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b). Although the courts are required to construe *pro se* complaints liberally, see *Boag v. MacDougall*, 454 U.S. 364, 365 (1982), under the PLRA, the "courts have no discretion in permitting a plaintiff to amend a complaint to avoid a *sua sponte* dismissal," *McGore v. Wigglesworth*, 114 F.3d 601, 612 (6<sup>th</sup> Cir. 1997).

As previously noted, the plaintiff is suing the defendants in their official capacity only. In an official-capacity-only lawsuit, the real party in interest is the represented governmental entity. See *Hafer v. Mels*, 502 U.S. 21, 25-26 (1991). By suing the defendants in their official capacity only, the plaintiff is, in essence, suing the County of Sumner. To prevail against the County of Sumner, the plaintiff must claim that the alleged violations of his constitutional rights stemmed from a county policy, regulation, decision, custom, or the tolerance of such violations. Otherwise, a § 1983 claim will not lie. See *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989); *Monell v. New York City Department of Soc. Serv's*, 436 U.S. 658, 690-91 (1978); *Doe v. Claiborne County, Tenn.*, 103 F.3d 495, 507-09 (6<sup>th</sup> Cir. 1996).

The plaintiff does not claim, nor can it be liberally construed from the complaint, that any such county policy, regulation, decision, custom, or tolerance of such violations was responsible for the alleged events that occurred the morning of December 10, 2008. Therefore, the County of Sumner is not liable under § 1983. For these reasons, the complaint will be dismissed for failure to

state a claim on which relief may be granted

An appropriate order will be entered

A handwritten signature in black ink that reads "Todd Campbell". The signature is written in a cursive style with a horizontal line underneath the name.

Todd Campbell  
United States District Judge